

REMARKS

A. Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim subject matter which applicant regards as the invention. In response to this rejection, claim 2 has been amended and now particularly point outs and distinctly claims the subject matter which applicant regards as the invention. No new matter is presented.

B. Claims 1-10 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Marckardt reference, U.S. Pat. No. 3,756,386 in view of Baker et al., U.S. Pat. No. 4,341,302 and optionally Maletz et al. (EP 1153579 82). Clarifying amendments have been made to claims 1, 6 and 12 and claim 5 has been cancelled.

Marckardt is cited for disclosing a first chamber containing a flowable substance and a second chamber where the first and second chambers are sealed in a liquid-tight manner. Furthermore, the reference is cited for disclosing a “zone 9 connecting the first and second chambers.” (Office Action, p.3)

The Baker reference is cited for disclosing a plastic-foil composite structure for the cover film. Maletz et al. is cited for disclosing a weakened zone (the Examiner specifically points to Fig. 19, item 2 of Maletz). The rejection is based on the position that it would have been obvious to modify the package of Marckardt to form a cover film with a stabilising film having the weakened zone.

Independent claim 1 is not obvious over the cited art since the combination of the cited art does not disclose a stabilising film that includes a recess as the material weakening in the zone associated with the second chamber. As detailed above, the Examiner cites Maletz as allegedly disclosing the weakening zone. However, Applicant respectfully asserts that Maletz simply shows a zone (item 2) that is pierced by element 5 (see Fig. 19). It is unclear how this shows a material weakening. Even beyond this,

Maletz fails to show a stabilizing film with a recess that is the material weakening in the zone associated with the second chamber. Similarly, Marckardt and Baker also fail to disclose or suggest a stabilising film with a recess that is the material weakening in the zone associated with the second chamber.¹

As the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. V. Teleflex Inc.*, published October 10, 2007 state, “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” The Examiner can not provide conclusory statements without support for his legal conclusion of obviousness. In this case, the Examiner has not clearly articulated how Applicant’s stabilising film having a recess that forms the material weakening in the zone associated with the second chamber is obvious. There is no articulated reasoning provided as to why these features not present in the prior art are obvious.

C. Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the Marckardt reference further in view of Peuker et al., U.S. Patent No. 6,105,761. The Peuker et al. reference was cited for disclosing dispensing packages for simplified storage, but fails to remedy the deficiencies of the primarily-cited Marckardt and secondarily-cited Baker et al. references.

The dependent claims 2-12 are also allowable as depending from an allowable base claim and for reciting additional features of the invention that are not disclosed or suggested in combination with the features of claim 1.

¹ The Examiner correlates Applicant’s stabilizing film to Marckardt’s cover film 1, however, as is clearly seen from the figures of the cited reference, the cover film does not include a recess that forms the material weakening in the zone associated with the second chamber.

Prompt and favorable examination on the merits is requested.

Respectfully submitted,



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